Supreme Court, U. S.
FILED
JUN 21 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1621

MANERVIA BROWDER LOCKETT,
Petitioner,

versus

LORENZO COLEMAN, PETER SHINE,
JOSHUA SHINE AND SARA BROOKS,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

CHARLES S. CONLEY,
Executive House
315 South Bainbridge St.
Montgomery, Alabama
Attorney for Petitioner

INDEX

Page

Opinions Below 2

Jurisdiction 2

Questions Presented 2

Constitutional and Statutory Provisions Involved 3

Statement 3

Reasons for Granting the Writ 8

Conclusion 13

Certificate of Service 14

Appendix A

I. Constitutional Provisions, Statutes 1a

Appendix B

I. Opinion of Alabama Supreme Court 2a

II. Opinion of the Circuit Court of Montgomery County, Alabama 7a

III. Order of the Probate Court of Montgomery County, Alabama 11a

TABLE OF AUTHORITIES

Cases:

Barr v. Columbia, 378 U.S. 146, 84 S.Ct. 1734 10

Central Land Co. v. Laidley, 159 U.S. 103, 16 S.Ct. 80 11

Davis v. Wechsler, 263 U.S. 22, 44 S.Ct. 13 9

Ex Parte Virginia, 100 U.S. 339 9

Garner v. Louisiana, 368 U.S. 157 9

TABLE OF AUTHORITIES (Continued)

Page

Henderson v. Mayor of New York, 92 U.S. 259 9

Herb v. Pitcairn, 324 U.S. 117, 65 S.Ct. 459 11

Mooney v. Holohan, 294 U.S. 103, 55 S.Ct. 103 9

NAACP v. Alabama, 377 U.S. 296, 84 S.Ct. 1302 13

Rogers v. Alabama, 192 U.S. 226, 24 S.Ct. 259 9

Strauder v. West Virginia, 100 U.S. 303 9

Thompson v. City of Louisville, 362 U.S. 199 9,13

Wright v. Georgia, 373 U.S. 284, 83 S.Ct. 1240 ... 10-11

Yick Wo v. Hopkins, 118 U.S. 356, 6 S.Ct. 1064 12

Constitutional Provisions and Statutes:

Fourteenth Amendment to the Constitution of The United States 13

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1974

No.

MANERVIA BROWDER LOCKETT,
Petitioner,

versus

LORENZO COLEMAN, PETER SHINE, JOSHUA SHINE AND SARA BROOKS,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

To The Justices of the Supreme Court of the United States:

Petitioner, Manervia Browder Lockett, respectfully prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Alabama, entered on December 5, 1974, and the Petition for Rehearing which was denied on February 20, 1975, which affirmed a judgment entered on July 3, 1973, in the Circuit Court of Montgomery County, Alabama, which held that Respondent Lorenzo Coleman was the legal husband of the intestate, Aurelia Browder Coleman and therefore entitled to share in an estate valued at

approximately $150,000.00 and that an agreement between the parties to settle the claim of several claimants joined herein as Respondents was valid and binding.

OPINIONS BELOW

The opinion of the Supreme Court of Alabama in Lockett vs. Coleman, et. als, is reported at ____ Alabama ____, 308 So. 2d 689, and set forth in Appendix B, infra pp. 2a-7a. The opinion of the Circuit Court of Montgomery County, Alabama is also printed in Appendix B, infra pp. 7a-10a, and an Order of the Probate Court of Montgomery County, Alabama at pp. 11a-12a.

JURISDICTION

The judgment of the Alabama Supreme Court was entered on December 20, 1974, and the Petition for Rehearing was denied on February 20, 1975.

The jurisdiction of this court is based on 28 U.S.C. 1257 (3), petitioner having alleged below, and alleged herein the denial of due process, deprivation of rights and immunities secured by the Fourteenth Amendment to the Constitution of the United States.

QUESTIONS PRESENTED

(1) Did the Alabama Supreme Court err in denying relief to the Petitioner by affirming a Circuit Court judgment which upheld the validity of a marriage although the surviving spouse testified that he had earlier married another woman and was not divorced at the time he attempted to marry the decedent?

(2) Did the Alabama Supreme Court err in its failure to rule or otherwise respond to Petitioner's showing on appeal that she had been deprived of a right to a fair trial which was conducted by a bias Court as is reflected in the transcript of the trial proceeding which was in violation of the Fourteenth Amendment to the Constitution of the United States?

(3) Whether the rights of the Petitioner and others in her class to due process as guaranteed by the Fourteenth Amendment is violated by an affirmance of a lower court judgment by the Alabama Supreme Court following an Alabama rule of law which provides that unless the ruling of a trial court is "Palpably Wrong," the finding of said trial court will not be corrected on appeal by the Alabama Supreme Court?

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves Section I of the Fourteenth Amendment to the Constitution of the United States.

STATEMENT

On February 11, 1971, Manervia Browder Lockett, the daughter and eldest child of the decedent, petitioned the Probate Court of Montgomery County, Alabama for Letters of Administration to administer the Estate of Aurelia Browder Coleman, deceased. Pursuant to said petition, Letters of Administration were granted, after the petitioner qualified and provided proper bond as required by law.

At the time of her death, Aurelia Browder Coleman had a cash personal estate, conservatively estimated

at $123,000, which was on deposit in two banks in Montgomery, Alabama. Said deceased was survived by three sons, one daughter, two grandchildren of a deceased daughter, and an alleged surviving spouse, named LORENZO COLEMAN, one of the defendants below, whom she had attempted to marry a few years prior to her death.

Sara Brooks, Joshua Shine, and Peter Shine, claimants and respondents herein filed a claim in the Probate Court for $120,000 against the estate in question, which represented their alleged share of an original sum of $160,000, which their sister, the deceased, Aurelia Browder Coleman had received from the sale of certain real estate, earlier conveyed to her by their father.

Upon the insistence of Respondent Lorenzo Coleman, a counter offer was made in the amount of $25,000 to the claimant by the legal heirs of the deceased, although their right to the claim of $120,000 was unproven and unsubstantiated. The $25,000 offer was further made with the understanding that the settlement was to be paid to the two surviving brothers and sister of the deceased and was to be divided equally among each of them, in as much as the Respondent, Lorenzo Coleman had bargained and agreed to accept $24,000 as a settlement in full of his share in the estate. He further agreed to waive all other claims which he might have as a surviving spouse. Respondent Coleman would have been entitled, as a surviving spouse, if the marriage was valid, to between $60,000 and $70,000. His agreement to accept a smaller share of the estate, was the moving factor causing the heirs of

the deceased to agree to make the offer of $25,000 to the claimants. The offer of settlement was brought about in view of the desire of Respondent Coleman to settle the estate as soon as possible. Therefore, a joint agreement was entered into whereby the claimants would receive $25,000 and the widower Coleman would accept $24,000 as a package settlement. Several days later, the said Lorenzo Coleman moved from the residence of his late wife, Aurelia Browder Coleman, deceased and left behind fragmentary evidence, which unequivocally indicated that he had never been divorced from his first wife which a recent investigation verified. Said evidence came to light when his room was being cleared and redecorated and only after the Lorenzo Coleman had left the City of Montgomery and moved elsewhere.

An Investigator from Phoenix, Arizona, employed by the petitioner, advised that he had found a marriage license and certificate which indicated that the respondent, Lorenzo Coleman was married to one Evelyn Coleman, who had not remarried, and was confined to bed in a nursing home, as a paralytic patient in San Diego, California, where she has been for many years.

Upon further investigation, the facts alleged were verified and an affidavit obtained from Evelyn Coleman on February 28, 1973. Said affidavit indicated, inter alia, that a child to said marriage was born on February 19, 1940, by the name of Georgia Mae Coleman. The affidavit was introduced in evidence in the Probate and Circuit Courts of Montgomery County, Alabama, and were in evidence before the Alabama Supreme Court on the appeal.

In view of the newly discovered evidence, on November 6, 1972, a motion was filed to set aside the final order of the Probate Court previously entered on behalf of the claimants on the ground that Lorenzo Coleman, was not legally married to the decedent at the time of her death and therefore had fraudulently induced Petitioner to enter into a joint settlement, beneficial not only to the claimants but also to the alleged surviving spouse Respondent Coleman.

A letter was written to counsel for Respondent Coleman, to which were attached copies of several telegrams found among his private papers, which indicated that Respondent, Lorenzo Coleman, was clearly guilty of bigamy, in that he had married one Evelyn McGill in Phoenix, Arizona on August 17, 1945, and that court records in the states of Arizona, Alabama and Louisiana, where he had lived since said marriage were checked and indicated that he had never been divorced from said wife. The Petitioner herein, nevertheless, authorized counsel to turn over to Lorenzo Coleman's attorney the $24,000.00 promised him provided proof of a valid divorce by Coleman from his first wife was verified.

The joint agreement, which was entered into as a package settlement with regards to the claimants, was not honored by Petitioner because of the fraud perpetrated upon the estate by Respondent Coleman and the claimants whether knowingly or unknowingly. At a hearing scheduled in Probate Court in the presence of a Court Reporter, a motion was made by Petitioner herein to dismiss or set aside the order providing for the claimants to receive $25,000.00, with leave to file said motion in writing at a later time.

At the hearing in Probate Court on December 1, 1972, an order was entered setting aside, the $24,000.00 payment to be made to defendant Lorenzo Coleman, however, the Court refused to set aside that part of the joint agreement wherein the claimants were to receive $25,000.00. Respondent Coleman, thereafter sought to recover one-half of the personal estate of the deceased, now amounting to approximately $75,000.00. Except for the agreement urged upon Petitioner to pay the claimants $25,000.00, there was no basis, in law or fact, which would have entitled the claimants, under any set of circumstances, to any award from the estate.

On May 9, 1973, a Petition for Instruction was submitted to the Circuit Court of Montgomery County, Alabama, as an appeal from the order to pay $25,000.00 to the claimants, and to determine all other issues involved in the proceedings regarding the right of Lorenzo Coleman, the purported surviving spouse, to share in the assets of the estate.

After the presentation of evidence, the trial court entered judgment in favor of the claimants, without having any proof of their claim, on the basis that said claim had already been approved in the Probate Court. The trial court further held that the said Lorenzo Coleman was the surviving spouse of the deceased, Aurelia Browder Coleman, and was therefore entitled to share fully in all of the assets of the estate, even though Lorenzo Coleman admitted that he had in fact, married Evelyn McGill years earlier in Phoenix, Arizona, before his attempted marriage to the deceased and had never received or sought a divorce from his first wife at any time.

Upon appeal to the Supreme Court of Alabama, said Court affirmed on December 20, 1974, the judgment of the Circuit Court on the ground that there was no "Palpably Error" committed below.

In view of the unusual number of factual errors clearly indicating a misunderstanding of essential facts in the case which the Court's opinion revealed, together with legal errors, a Petition for Rehearing was submitted, however, the Alabama Supreme Court merely corrected said errors and denied the Petition for Rehearing as requested.

REASONS FOR GRANTING THE WRIT

This Petition presents three serious and substantial issues involving the denial of substantive due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States by the Alabama Supreme Court.

The doctrine espoused by the Court below is that unless there is manifest, distinct, or easily perceptible error perpetrated by the trial court in so far as claimed or asserted reversible error is concerned, the state's highest appellate tribunal here, the Alabama Supreme Court will turn its deft ear to the cries of the injured or aggrieved party, when his property rights are being destroyed through fiat, here unfortunately at the behest of a court of inferior jurisdiction.

Even though the parties involved were all black citizens the Alabama Supreme Court was not privileged to permit an unequal administration of the

law by public authority, here a bias trial court which petitioner indicated had ignored repeated objections to the manner in which her property rights were being adversely affected to her detriment in violation of the Fourteenth Amendment to the Constitution of the United States. The transcript of the trial proceedings clearly verified the claims of the petitioner. This Court has held again and again, that the law is clear, that discrimination based on color is equally repugnant whether it takes the form of legislation or unequal administration of the law by public authority, including state trial and appellate courts. *Henderson v. Mayor of New York*, 92 U.S. 259; and *Mooney v. Holohan*, 294 U.S. 103, at page 113. In an effort to resolve this problem, this Court stated in *Rogers v. Alabama*, 192 U.S. 226, at page 230, as follows:

> "It is a necessary and well settled rule that the exercise of jurisdiction by this Court to protect Constitutional rights cannot be declined when it is plain that the fair result of a decision is to deny the right."

The Constitution of the United States prohibits discrimination by individual state actions as announced in *Ex Parte Virginia*, 100 U.S. 339; *Strauder v. West Virginia*, 100 U.S. 303 (1879), *Garner v. Louisiana*, 368 U.S. 157 (1961), and *Thompson v. City of Louisville*, et al., 362 U.S. 199.

In *Davis v. Wechsler*, 263 U.S. 22, 44 S.Ct. 13 (1923), involving a suit for personal injuries suffered by the plaintiff, wherein a state court dismissed plaintiff's case, this Court in reversing a Missouri court stated as follows:

> "If the Constitution and laws of the United States are to be enforced, this Court cannot accept as final the decision of the state tribunal as to what are the facts alleged to give rise to the right or to bar the assertion of it even upon local grounds. *Creswill v. Grand Lodge Knights of Pythias*, 225 U.S. 246, 32 S. Ct. 822, 56 L.Ed. 1074. This is familiar as to the substantive law and for the same reasons it is necessary to see that local practice shall not be allowed to put unreasonable obstacles in the way."

Fundamental rights inhibited or repressed are lost irreparably. This case presents issues of importance in the enforcement of the Petitioner's property rights. It is apparent from the opinion of the Alabama Supreme Court, which is replete with errors (Appendix B, 2a-7a) that the Court did not understand the confusing and complicated facts, in spite of the efforts of petitioner to simplify the facts. The procedural requirement which will permit a state court to write off or nullify petitioner's appeal, when it so elects, has been heretofore referred to in *Barr v. Columbia*, 378 U.S. 146, at p. 149, 84 S. Ct. 1734, at p. 1736, wherein this Court stated:

> "We have often pointed out that state procedural requirements which are not strictly or regularly followed cannot deprive us of the right to review. See e.g., *NAACP v. Alabama* ex rel Flowers, 377 U.S. 288, 84 S. Ct., 1302; *Shuttlesworth v. Birmingham*, 376 U.S. 339, 84 S. Ct. 795, 11 L.Ed. 2d 766; *Wright v.*

> *Georgia*, 373 U.S. 284, 83 S. Ct. 1240, 10 L.Ed. 2d. 349; *NAACP v. Alabama* ex rel Patterson, 357 U.S. 449, 78 S. Ct. 1163, 2 L.Ed. 2d 1499."

Unconstitutional decisions of state courts should be restrained, *Central Land Co. v. Laidley*, 159 U.S. 103, 16 S. Ct. 80, and wrong judgment corrected, *Herb v. Pitcairn*, 324 U.S. 117, 65 S. Ct. 459.

Where the fact of bias on the part of trial court tribunals is substantiated by the record of the trial proceeding and said transcript has been properly submitted to a state supreme court, and said decision is, nevertheless, affirmed because the court does not consider errors committed to be too substantial, the rights of the injured party is often irreparable.

To contenance the practice complained of in this petition by permitting this practice to prevail encourages state and local officials to subvert state courts for the improper purpose of depriving citizens of their constitutional rights. If the decision below remains unreviewed, the scope of the right to a fair and impartial trial is perceptibly narrowed.

The decision of the Alabama Supreme Court is contrary to decisions of this Court, since it narrowly construed a constitutionally protected right, and does not respond to or considers the constitutional question on appeal which treats it as though it had not been appropriately raised. To reach the decision in question, the Alabama Supreme Court effectively treated an essential part of the petition as though it had not been presented.

As this Court said in *Yick Wo v. Hopkins*, 118 U.S. 386 (1886):

> "Though the law itself be fair on its face, and impartial in appliance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution . . ."

The Alabama Supreme Court's affirmance of the decree in the trial court was totally baseless in that it utterly failed to state a single legal basis premised on established Alabama law. This court is respectfully invited to consider the opinion prepared by the Alabama Supreme Court in view of the charges which petitioner now makes.

This Court should issue the writ in order to investigate and reexamine the method of dispensing with fundamental rights, which the Alabama Supreme Court irresponsibly circumvents. The decision entered in the case at bar amounts to a flounting of the fundamental rules of this Court, *Yick Wo v. Hopkins*, supra.

If this case stands unreviewed and unreversed, not only will the protection of property rights be impeded, but the Alabama Supreme Court will have been given permission to place a curtain of silence over erroneous verdicts and judgments in violation of the

due process clause of the Fourteenth Amendment to the Constitution of the United States, *Thompson v. City of Louisville*, et al., 352 U.S. 199.

Reference has heretofore been made to the practice of the Alabama Supreme Court's abuse of its discretion, which has permitted it to consider what it has called assigned errors in certain cases and a refusal to consider error in others. This Court in *NAACP v. Alabama*, 377 U.S. 288 at 301, 84 S. Ct. 1202, at 1310 stated:

> "In sum, we think that what we said when this litigation was first here, with respect to the procedural point there asserted as a state ground of decision adequate to bar review of the merits also fits the present situation."
>
> "Novelty in procedural requirement cannot be permitted to thwart review in this Court applied for by those who, in justified reliance upon proper decisions, seek vindication in state courts of their federal constitutional rights." 357 U.S. 457.

CONCLUSION

For the foregoing reasons, this petition for Writ of Certiorari should be granted.

Charles S. Conley
315 South Bainbridge Street
Montgomery, Alabama 36104

Attorney for Petitioner

CERTIFICATE OF SERVICE

This is to certify that two copies of the above and foregoing petition have been served on A. Ted Bozeman, Esq., 420 So. Lawrence Street, Montgomery, Alabama, Oscar W. Adams, Jr., Esq., 2121 8th Avenue, North, Birmingham, Alabama 35203, attorneys for the Respondents (Appellees) via U.S. Mail, postage prepaid this ____ day of June, 1975.

_____

Of Counsel

APPENDIX A

Constitutional and Statutory
Provisions Involved

CONSTITUTION OF THE UNITED STATES

AMENDMENT XIV

Section I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; not shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX B

THE STATE OF ALABAMA —
JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1974-75

Manervia Browder Lockett

S.C. 812 versus

Lorenzo Coleman, et al.

Appeal from Montgomery Circuit Court

MADDOX, JUSTICE.

Manervia Browder Lockett, as administratrix of her late sister's estate, appeals from a judgment entered by the Circuit Court of Montgomery County. She principally argues that the trial court erred in finding that Lorenzo Coleman, the appellee, was the legal husband of her intestate at the time of her death and, therefore, entitled to share in the estate. She also claims the trial court erred in finding that a settlement agreement made between Coleman and other heirs of the estate was valid and binding.

Manervia Lockett was appointed administratrix on February 11, 1971. Sara Brooks, Joshua Shine and Peter Shine, sister and brothers of the deceased, filed

claims against the estate in August, 1971. Lorenzo Coleman filed a petition for an accounting and other relief. All of these petitions were presented to the probate court of Montgomery County. While the matter was pending in probate court, the various claimants made a settlement agreement.

On October 6, 1972, the probate court entered an order giving effect to the settlement agreement under which Sara Brooks, Joshua Shine and Peter Shine, were to get $25,000. Coleman was to get $24,000 as settlement in full of his share of the estate.

Other proceedings were had in the probate court which we omit from this opinion. We do note that both the administratrix and Coleman agreed to cancel that portion of the settlement agreement whereby he would get $24,000.

On May 7, 1973, the administratrix filed a petition to remove the estate to the Circuit Court of Montgomery County; the case was removed. In Circuit Court, she asked the court to determine the rights of all parties. The matter was tried in Circuit Court on these issues:

1. Whether the settlement agreement should be upheld as to Sara Brooks, Joshua Shine and Peter Shine.

2. Whether Lorenzo Coleman was the legal husband of the deceased at the time of her death.

The court, after hearing, found:

"WHEREAS, testimony was had in regard to the validity of the agreement heretofore entered into by the parties regarding the claim in the amount of $25,000; and testimony was further taken to determine the validity of the marriage of Lorenzo Coleman to the deceased Aurelia Browder Coleman; and,

"It appearing to the Court from the testimony and evidence presented to the Court that there was a valid and binding agreement of settlement entered into between the estate and its attorney, and the claimants and their attorney, approved by the Probate Court, and there was no fraud, mistake or lack of consent involved therein, and therefore the claimants are entitled to be paid the settlement sum of $25,000.00.

"The Court further finds that the estate, through its attorney, and Lorenzo Coleman, through his attorney, agreed to set aside their settlement of $24,000.00 and this was not a joint settlement with the claimants.

* * *

"It further appearing to the court that from the testimony and evidence

presented to the Court that Lorenzo Coleman was the legal husband of Aurelia Browder Coleman, deceased, and is entitled to a share of this estate to the extent the law provides a husband under the laws of the State of Alabama; . . ."

Did the trial court err in finding that Coleman was the legal husband of Aurelia Browder Coleman at the time of her death? We think not.

Admittedly, there is evidence that Coleman had been married several times. Apparently, he first married one Evelyn McGill on August 17, 1945. He lived with her two weeks prior to his shipment overseas for eighteen months. Evelyn McGill gave birth to an illegitimate child on February 19, 1946. Upon his return, Coleman found out that "Evelyn McGill Coleman" had been married to one Ira Crain since June 11, 1936. In November, 1955, Evelyn McGill, i.e., Evelyn Crain, filed a bastardy proceeding against Coleman in which she alleged that she was never married to Coleman.

Coleman later married one Helen Dawkins, but subsequently divorced her. He then married Aurelia Browder, the decedent.

The administratrix argues that Lorenzo Coleman was not legally married to Aurelia Browder Coleman. She claims that Coleman's prior marriage to McGill had not been dissolved. We will not set out the evidence which supports the trial court's finding that Lorenzo Coleman was legally married to Aurelia Browder Coleman at the time of her death. We do set forth some

of the legal principles involved to show that we find no error in the court's findings. These principles are:

If a marriage is established, it is presumed to be regular and valid. The burden of adducing evidence to the contrary is on the party who attacks it. 55 C.J.S. 890, §43(c); *Sloss-Sheffield Steel & Iron Co. v. Alexander*, 241 Ala. 476, 3 So. 2d 46 (1941). One does not meet this burden by a mere showing that one of the parties was previously married to another. *Dorsey v. Dorsey*, 259 Ala. 220, 66 So. 2d 135 (1953). There is a presumption that the prior marriage has been dissolved by divorce. *Jordan v. Copeland*, 272 Ala. 336, 131 So.2d 696 (1961). The presumption is rebuttable, of course. *Hammond v. Shipp*, ___ Ala. ___, 289 So. 2d 802 (1974).

The trial judge saw and heard the witnesses. Where evidence is heard ore tenus, every presumption will be indulged in favor of the trial court's findings of fact. His findings will not be disturbed unless palpably wrong. 2A Ala. Dig. Key 1008.1(6), Appeal and Error.

AFFIRMED.

Heflin, C.J., Merrill, Harwood and Faulkner, JJ., concur.

[Filed Dec. 5, 1974]

The trial judge saw and heard the witnesses. Where evidence is heard ore tenus, every presumption will be indulged in favor of the trial court's findings of fact.

His findings will not be disturbed unless palpably wrong. 2A Ala. Dig. Key 1008.1(6), Appeal and Error.

AFFIRMED.

Heflin, C.J., Merrill, Harwood and Faulkner, JJ., concur.

ON REHEARING

MADDOX, JUSTICE.

Opinion corrected. Application for rehearing overruled and denied.

[Filed Feb. 20, 1975]

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA
IN EQUITY
CASE NO. 38771

IN THE MATTER OF THE ESTATE OF
AURELIA BROWDER COLEMAN, DECEASED

DECREE

This cause coming on to be heard upon the petition of Manervia Browder Locket, as administratrix of the estate of Aurelia Browder Coleman, deceased; and upon the petition of Lorenzo Coleman, surviving husband of Aurelia Browder Coleman, deceased; for a determination of the interest of the claimants; a determina-

tion of the validity of the marriage of Lorenzo Coleman to the deceased, and for an accounting by the administratrix in this matter as well as a contempt citation to the administratrix; and,

It appearing to the Court that all parties are before the Court, either in person or through their respective Solicitors of Record; and,

It further appearing upon agreement of the Solicitors for the parties herein no testimony was taken regarding the contempt citation or the validity of an accounting in this estate; and,

WHEREAS, testimony was had in regard to the validity of the agreement heretofore entered into by the parties regarding the claim in the amount of $25,-000; and testimony was further taken to determine the validity of the marriage of Lorenzo Coleman to the deceased Aurelia Browder Coleman; and,

It appearing to the Court from the testimony and evidence presented to the Court that there was a valid and binding agreement of settlement entered into between the estate and its attorney, and the claimants and their attorney, approved by the Probate Court, and there was no fraud, mistake or lack of consent involved therein, and therefore the claimants are entitled to be paid the settlement sum of $25,000.00.

The Court further finds that the estate, through its attorney, and Lorenzo Coleman, through his attorney, agreed to set aside their settlement of $24,000.00 and this was not a joint settlement with the claimants.

The Court further finds Oscar W. Adams, Jr. was the lawyer for the claimants at the time of the filing of the claimants' claim, in the settlement in this case and in all subsequent hearings and the settlement was fair in all respects.

It further appearing to the court that from the testimony and evidence presented to the Court that Lorenzo Coleman was the legal husband of Aurelia Browder Coleman, deceased, and is entitled to a share of this estate to the extent the law provides a husband under the laws of the State of Alabama; and,

It appearing to the Court that after the agreement of the parties that testimony should be had at a later date regarding the accounting in this matter as well as the contempt citation and the court is of the opinion that such accounting should be a final settlement of this estate. It is, therefore,

ORDERED, ADJUDGED, and DECREED by the Court that Manervia Browder Coleman, deceased, be and is hereby directed to pay Oscar W. Adams, Jr. as Solicitor for the said Sarah Brooks, Peter Shine, and Joshua Shine, $25,000.00 in full settlement and extinguishment of the trust funds herein held by the said Aurelia Browder Coleman, deceased, prior to her death. That said payment shall be made by the administratrix prior to the date of final settlement of this estate; and that said payment will constitute full settlement of the claim filed in this matter.

It is further, ORDERED, ADJUDGED, and DECREED by the Court that Lorenzo Coleman was the

legal husband of the decedent, Aurelia Browder Coleman, at the time of her death, and is entitled to share in the proceeds of this estate in accordance with the laws of the State of Alabama.

It is further, ORDERED, ADJUDGED, and DECREED that the citation contempt heretofore issued by this Court shall be abated until such time as a final settlement is made in this estate and that said final settlement will be had at Court Room 3, 8:30 a.m. on the 14 day of August, 1973, before this Court and the administratrix is hereby directed to prepare said final settlement and file said settlement with this Court no less than 5 days before the time set for hearing in this matter.

It is further, ORDERED, ADJUDGED, and DECREED that the administratrix not expend any money from this estate, other than the $25,000.00 due the claimants, prior to the hearing on final settlement.

It is further, ORDERED, ADJUDGED, and DECREED by the Court that all other matters are hereby reserved pending further order of this Court.

DONE this 3 day of July, 1973.

/s/ FRANK EMBRY
CIRCUIT JUDGE
FIFTEENTH JUDICIAL
CIRCUIT

STATE OF ALABAMA
MONTGOMERY COUNTY

PROBATE COURT

No. 8932
December 1, 1972

IN THE MATTER OF THE ESTATE OF
AURELIA BROWDER COLEMAN,
DECEASED

ORDER

This matter comes before the court upon a petition filed by the administratrix of the estate of Aurelia Browder Coleman, by and through her attorney of record, Charles S. Conley, to set aside the order of the court entered on the 6th day of October, 1972, in this proceeding and, also, upon the petition of Lorenzo Coleman, by and through his attorney of record, A. Ted Bozeman, to set aside the said order of the court.

Oscar W. Adams, Jr., attorney of record for Peter M. Shine, Joshua Shine and Sarah Brooks, appeared in court and opposed the setting aside of the order of October 6, 1972. Oscar W. Adams, Jr., represented Peter M. Shine, Joshua Shine and Sarah Brooks at the hearing in which the order was issued on October 6, 1972.

The order of October 6, 1972 was issued based upon an agreement of all the parties before the court.

At the hearing Peter M. Shine and Joshua Shine were represented by Bruce Boynton, who filed an an-

swer and stated in open court that they wanted the order of October 6, 1972 to be set aside. Sarah Brooks was represented by Oscar W. Adams, Jr., who supported the order of October 6, 1972 which had been consented to by all the parties on October 6, 1972.

After having heard testimony from all parties before the court and having heard arguments of the attorneys, it is

ORDERED, ADJUDGED AND DECREED, by the court that:

1. That part of the decree pertaining to the payment of $25,000.00 to Oscar W. Adams, Jr., for Peter M. Shine, Joshua Shine, and Sarah Brooks by the administratrix is hereby sustained.

2. That part of the decree pertaining to the payment of $24,000.00 to A. Tea Bozeman, as attorney for Lorenzo Coleman, is hereby set aside.

Done this the 1st day of December, 1972.

/s/ PERRY O. HOOPER
PERRY O. HOOPER,
JUDGE OF PROBATE